



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

APPEAL DECISION SUMMARY

APPEAL No: 2010-0374

DECISION DATE: March 29, 2010

OUTCOME: (check one)

☒ X SUSTAINED ☐ REVERSED ☐ REMANDED
☐ INVALID/FULL
☐ SUSTAINED and REMANDED
☐ REVERSED and REMANDED
☐ AGENCY ERROR/OTHER

ISSUE ON APPEAL: Excess resources –Aged, Blind or Disabled (ABD)

GENERAL RULE OF LAW: Standards ABD resource determination:

Conclusions of Law and Policy:

1. United States Code, 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are . . . available to the applicant or recipient.

2. The State plan must specify that . . . in determining financial eligibility of individuals, the agency will apply the cash assistance financial methodologies and requirements, unless the agency chooses to apply less restrictive allowable income and resource methodologies. If the agency chooses to apply less restrictive income and resource methodologies, the State plan must specify the less restrictive methodologies that will be used, and the eligibility groups to which the less restrictive methodologies will be applied. Code of Federal Regulations, 42 CFR §435.601, (f).
3. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. Medicaid Manual, Volume XIII, M1110.001, A (p. 1).

4. Eligibility with respect to resources is a determination made for each calendar month, beginning with the third month prior to the month in which the application is received. Resource eligibility exists for the full month if countable resources were at or below the applicable resource limit for any part of the month. M1110.001, B 1 (p. 1).
5. When an applicant for Medicaid reports that he, or anyone for whom he requests assistance, received a medical service within the three months prior to application, retroactive Medicaid eligibility must be determined. The retroactive period is based on the month in which the application is filed with the agency. The retroactive period is based on the application month regardless of whether the application was denied or approved. Medicaid Manual, Volume XIII, M0130.100, C (p. 3).
6. Resources are cash and any other personal or real property that an individual owns, has the right, authority or power to convert to cash and is not legally restricted from using for his support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B 1 (p. 3); M1120.010, B (p. 2).
7. Liquid resources are any resources in the form of cash or in any other form which can be converted to cash within 20 workdays. Non-liquid resources which are not in the form of cash which cannot be converted to cash within 20 workdays. Medicaid Manual, Volume XIII, S1110.300, A 1 (p. 8).
8. Personal property is any property that is not real property. The term encompasses such things as cash, tools, life insurance policies, and automobiles. Medicaid Manual, Volume XIII, S1110.100, C 2 (p. 3).
9. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.300, H (p. 8).
10. The institutionalized individual's former home in which he has an ownership interest, and which he occupied as his residence before becoming institutionalized, is not a countable resource for the first six months following admission to a medical facility or nursing facility. The former home is excluded indefinitely when it is occupied by a spouse, minor child, aged or disabled adult child, or an aged or disabled parent. Medicaid Manual, Volume XIII, M1460.530, A (p. 18a).
11. For property owned by an individual who is incompetent if no general power of attorney exists:
When court action is initiated for appointment of a guardian or conservator to secure the court's approval to dispose of the property, an initial effort to sell shall be deemed to have been made beginning the date the hearing for appointment of a guardian is placed on the court docket and continuing until the court authorizes sale of the property or six months, whichever is less. Any period of time in excess of six months to secure appointment of a guardian and authorization to sell by the court is not deemed reasonable and the property loses this exemption. Upon authorization, and only upon authorization, the guardian must make a continuing reasonable effort to

sell the property as described in paragraph B.3. Medicaid Manual, Volume XIII, S1130.140, B 1d (p. 14).

12. Hearing on petition to appoint: If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person, who may be the spouse of the respondent, to be the guardian or the conservator or both, giving due deference to the wishes of the respondent. Code of Virginia, 37.2-1007.
13. A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § 37.2-1005. Code of Virginia, 37.2-1006.
14. For checking and savings account balances which must be verified, in addition to the balances themselves, the name and address of the financial institution, the account number(s) and the exact account designation. Medicaid Manual, Volume XIII, S1140.200, B 3 (p. 17).
15. The countable value of a bank account is the lower of the balance before income is added, or the ending balance minus any income added during the month. Funds cannot be both income and a resource in the same month. Income that has been added to a bank account during the month must be subtracted from the ending balance to ensure that the income is not also counted as a resource. Medicaid Manual, Volume XIII, M1110.600, B 3 (p. 18); M1140.200, B 5 (p. 18).
16. A life insurance policy owned by the individual is a resource if it generates a cash surrender value (CSV). Its value as a resource is the amount of the CSV. Medicaid Manual, Volume XIII, M1130.300, B 1 (p. 20).
17. The cash value of a life insurance policy is not excluded as a resource for an individual age 21 or over, if its Face Value (FV) and the FV of any other life insurance policies the individual owns on the same insured total over \$1,500.00. Medicaid Manual, Volume XIII, M1130.300, B 2 (p. 20).
18. This subchapter provides no categorical assumption regarding the liquidity or non-liquidity of life insurance policies. Medicaid Manual, Volume XIII, S1110.310, C (p. 10).
19. The value of any asset that meets the definition of a resource counts against the applicable resource limit, unless otherwise excluded. Medicaid Manual, Volume XIII, S1110.200 (p. 6).
20. Make all resource determinations per calendar month. Resource eligibility exists for the full month if countable resources are at or below the applicable resource limit for

any part of the month. Medicaid Manual, Volume XIII, M1110.001, B 1 (p. 1); M1110.600, A (p. 18).

21. The Medicaid resource limit for one person in the Categorically Needy, Categorically Non-Money Payment, and Medically Needy covered groups is \$2,000. Medicaid Manual, Volume XIII, M1110.003, B 2 (p. 2); M1460.500, B 1 (p. 17).
22. An applicant who reduces excess resources during the month of application or a subsequent month before action is taken on the application may become eligible in the month in which the value of his resources is reduced to, or below, the Medicaid resource limit. In order to reduce resources, the resources must actually be expended and the expenditure documented. (For example: a receipt, a canceled check, or a bank statement). When excess resources are reduced, entitlement to ongoing Medicaid may begin no earlier than the first day of the month in which the resources were reduced to the Medicaid limit. Medicaid Manual, Volume XIII, M1510.102, C (p. 8).
23. Excess resources throughout the month of application cause ineligibility for the application month. Reduction of excess resources within the application month can cause resource eligibility for that month. Medicaid Manual, Volume XIII, M1110.003, B 4 (p. 2).
24. An individual cannot retroactively reduce resources. If the countable resources exceeded the resource limit throughout a retroactive month, the individual is not eligible for that month. However, if an applicant reduces excess resources within a retroactive month, he may be eligible in the month in which the value of his resources is reduced to or below the Medicaid resource limit. Medicaid Manual, Volume XIII, M1460.520, B (p. 18a).
25. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, B 1 (p. 2).

AGENCY DECISION: The hearing officer sustained the action of the agency, based upon the following:

The Appellant applied for LTC Medicaid. The Appellant owned a home, checking and savings accounts, and a life insurance policy. The local agency exempted the Appellant's home pending the appointment of a guardian. The local agency determined that the Appellant's bank accounts and life insurance policy were countable resources that exceeded the limit for the LTC covered groups. Therefore, the local agency denied the Appellant's LTC Medicaid eligibility.

APPLICABLE CITATIONS FOR ACTION:

United States Code

42 U.S.C. §1396a (a)(17)(B)

Code of Federal Regulations

42 CFR §435.601, (f)

Code of Virginia,

37.2-1006

37.2-1007

Medicaid Manual, Volume XIII,

M0130.100, C (p. 3)

M0130.300, H (p. 8)

M1110.001, A, B 1; B 4 (p. 1)

M1110.003, B 1; B 2; B 4 (p. 2)

M1110.100, B 1; C 2 (p. 3)

S1110.200 (p. 6)

S1110.300, A, 1 (p. 8)

S1110.310, C (p. 10)

M1110.600, A (p. 18)

M1120.010, B (p. 2)

S1130.140, B 1d (p. 14)

M1130.300, B 1 & 2 (p. 20)

M1140.200, B 3 & 5 (pp. 17-18)

M1460.500, B 1 (p. 17)

M1460.520, B (p. 18a)

M1460.530, A (p. 18a)

M1510.102, C (p. 8)